IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION,	§	
	§	
Plaintiff,	§	**Civil Action No. 2:06cv72**
	§	
vs.	§	**JURY TRIAL DEMANDED**
	§	
WELLS FARGO & COMPANY; ET AL.,	§	
	§	
Defendants.	§	

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HSBC BANK'S AMENDED ANSWER TO COMPLAINT FOR PATENT INFRINGEMENT

Defendant HSBC Bank USA, N.A., ("HSBC Bank") answers Plaintiff DataTreasury Corporation's First Amended Complaint ("Complaint") for Patent Infringement as follows:

ADMISSIONS AND DENIALS OF PLAINTIFF'S ALLEGATIONS

I. THE PARTIES

1. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 1, and therefore, denies such allegations.

2. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 2, and therefore, denies such allegations.

3. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 3, and therefore, denies such allegations.

4. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 4, and therefore, denies such allegations.

5. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 5, and therefore, denies such allegations.

6. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 6, and therefore, denies such allegations.

7. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 7, and therefore, denies such allegations.

8. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 8, and therefore, denies such allegations.

9. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9, and therefore, denies such allegations.

10. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 10, and therefore, denies such allegations.

11. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 11, and therefore, denies such allegations.

12. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 12, and therefore, denies such allegations.

13. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 13, and therefore, denies such allegations.

14. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 14, and therefore, denies such allegations.

15. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 15, and therefore, denies such allegations.

16. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 16, and therefore, denies such allegations.

17. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 17, and therefore, denies such allegations.

18. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 18, and therefore, denies such allegations.

19. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 19, and therefore, denies such allegations.

20. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 20, and therefore, denies such allegations.

21. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 21, and therefore, denies such allegations.

22. HSBC Bank admits that HSBC North America Holdings, Inc. is a corporation that is incorporated in the State of Delaware, and has a principal place of business in the State

of Illinois. HSBC Bank denies that HSBC North America Holdings does business in Texas and further denies all other allegations in paragraph 22.

23. HSBC Bank admits that it is a principal subsidiary of HSBC USA Inc., which is an indirectly held wholly owned subsidiary of HSBC North America Holdings, Inc., and that it was served as alleged in paragraph 23. HSBC Bank denies all other allegations in paragraph 23.

24. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 24, and therefore, denies such allegations.

25. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 25, and therefore, denies such allegations.

26. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 26, and therefore, denies such allegations.

27. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 27, and therefore, denies such allegations.

28. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 28, and therefore, denies such allegations.

29. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 29, and therefore, denies such allegations.

30. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 30, and therefore, denies such allegations.

31. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 31, and therefore, denies such allegations.

32. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 32, and therefore, denies such allegations.

33. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 33, and therefore, denies such allegations.

34. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 34, and therefore, denies such allegations.

35. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 35, and therefore, denies such allegations.

36. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 36, and therefore, denies such allegations.

37. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 37, and therefore, denies such allegations.

38. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 38, and therefore, denies such allegations.

39. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 39, and therefore, denies such allegations.

40. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 40, and therefore, denies such allegations.

41. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 41, and therefore, denies such allegations.

42. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 42, and therefore, denies such allegations.

43. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 43, and therefore, denies such allegations.

44. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 44, and therefore, denies such allegations.

45. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 45, and therefore, denies such allegations.

46. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 46, and therefore, denies such allegations.

47. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 47, and therefore, denies such allegations.

48. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 48, and therefore, denies such allegations.

49. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 49, and therefore, denies such allegations.

50. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 50, and therefore, denies such allegations.

51. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 51, and therefore, denies such allegations.

52. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 52, and therefore, denies such allegations.

53. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 53, and therefore, denies such allegations.

54. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 54, and therefore, denies such allegations.

55. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 55, and therefore, denies such allegations.

56. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 56, and therefore, denies such allegations.

57. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 57, and therefore, denies such allegations.

58. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 58, and therefore, denies such allegations.

II. JURISDICTION AND VENUE

59. HSBC Bank admits that this action purports to be one arising under the patent laws of the United States and that the Court has subject matter jurisdiction. HSBC Bank denies the remaining allegations in paragraph 59 of the Complaint.

60. HSBC Bank admits that the Court has personal jurisdiction over it, but denies the remaining allegations in paragraph 60.

61. HSBC Bank denies the allegations contained in paragraph 61 of the Complaint as they pertain to HSBC Bank. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 61 as they pertain to Defendants other than HSBC Bank, and therefore, HSBC Bank denies such allegations.

62. HSBC Bank admits that it is one of the current users of Viewpointe Archive, denies that it is an owner of Viewpointe Archive and is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 62 as to Defendants other than HSBC Bank, and therefore, HSBC Bank denies such allegations.

63. HSBC Bank denies the allegations contained in paragraph 63 of the Complaint as they pertain to HSBC Bank. HSBC Bank is without sufficient knowledge or

information to form a belief as to the truth of the allegations contained in paragraph 63 as they pertain to Defendants other than HSBC Bank, and therefore, HSBC Bank denies such allegations.

64. HSBC Bank admits that it is one of the owners or current users of Small Value Payments Company, LLC and/or The Clearing House Payments Company, LLC, and is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 64 as to Defendants other than HSBC Bank, and therefore, HSBC Bank denies such allegations.

65. HSBC Bank denies the allegations contained in paragraph 65 of the Complaint as they pertain to HSBC Bank. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 65 as they pertain to Defendants other than HSBC Bank, and therefore, HSBC Bank denies such allegations.

III. PATENT INFRINGEMENTS

66. HSBC Bank admits that the United States Patent & Trademark Office issued Patent No. 5,910,988 ("the '988 Patent") on June 8, 1999 and that the face of that patent names Claudio Ballard as the inventor. HSBC Bank denies that the '988 Patent was duly and lawfully issued. HSBC Bank is without sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 66, and therefore, denies those allegations.

67. HSBC Bank admits that the United States Patent & Trademark Office issued Patent No. 6,032,137 ("the '137 Patent") on February 29, 2000 and that the face of that patent names Claudio Ballard as the inventor. HSBC Bank denies that the '137 Patent was duly and lawfully issued. HSBC Bank is without sufficient knowledge or information to

form a belief as to the remaining allegations in paragraph 67, and therefore, denies those allegations.

68. HSBC Bank admits that the United States Patent & Trademark Office issued Patent No. 5,265,007 ("the '007 Patent") on November 23, 1993 and that the face of that patent names John L. Barnhard, Jr., Thomas K. Bowen, Terry L. Greer, and John W. Liebersbach as the named inventors. HSBC Bank denies that the '007 Patent was duly and lawfully issued. HSBC Bank is without sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 68, and therefore, denies those allegations.

69. HSBC Bank admits that the United States Patent & Trademark Office issued Patent No. 5,583,759 ("the '759 Patent") on December 10, 1996 and that the face of that patent names Terry L. Greer as the inventor. HSBC Bank denies that the '759 Patent was duly and lawfully issued. HSBC Bank is without sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 69, and therefore, denies those allegations.

70. HSBC Bank admits that the United States Patent & Trademark Office issued Patent No. 5,717,868 ("the '868 Patent") on February 10, 1998 and that the face of that patent names David L. James as the inventor. HSBC Bank denies that the '868 Patent was duly and lawfully issued. HSBC Bank is without sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 70, and therefore, denies those allegations.

71. HSBC Bank admits that the United States Patent & Trademark Office issued Patent No. 5,930,778 ("the '778' Patent") on July 27, 1999, and that the face of that patent names Terry L. Greer as the inventor. HSBC Bank denies that the '778 Patent was duly and

lawfully issued. HSBC Bank is without sufficient knowledge or information to form a belief as to the remaining allegations in paragraph 71, and therefore, denies those allegations.

72. HSBC Bank denies the allegations in paragraph 72.

IV. COUNT ONE – THE ALLEGED '988 DEFENDANTS

73. HSBC Bank denies the allegations in paragraph 73 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 73, and therefore, denies those allegations.

74. HSBC Bank denies the allegations in paragraph 74 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 74, and therefore, denies those allegations.

75. HSBC Bank denies the allegations in paragraph 75 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 75, and therefore, denies those allegations.

76. HSBC Bank denies the allegations in paragraph 76 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 76, and therefore, denies those allegations.

V. COUNT TWO – THE ALLEGED '137 DEFENDANTS

77. HSBC Bank denies the allegations in paragraph 77 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient

knowledge or information to form a belief as to the allegations in paragraph 77, and therefore, denies those allegations.

78. HSBC Bank denies the allegations in paragraph 78 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 78, and therefore, denies those allegations.

79. HSBC Bank denies the allegations in paragraph 79 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 79, and therefore, denies those allegations.

80. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 80 and therefore denies those allegations.

VI. COUNT THREE – THE ALLEGED '077 DEFENDANTS

81. HSBC Bank denies the allegations in paragraph 81 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 81, and therefore, denies those allegations.

82. HSBC Bank denies the allegations in paragraph 82 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 82, and therefore, denies those allegations.

83. HSBC Bank denies the allegations in paragraph 83 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient

knowledge or information to form a belief as to the allegations in paragraph 83, and therefore, denies those allegations.

VII. COUNT FOUR – THE ALLEGED '759 DEFENDANTS

84. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 84 and therefore denies such allegations.

85 HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 85 and therefore denies such allegations.

86. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 86 and therefore denies such allegations.

VIII. COUNT FIVE – THE ALLEGED '868 DEFENDANTS

87. HSBC Bank denies the allegations in paragraph 87 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 87, and therefore, denies those allegations.

88. HSBC Bank denies the allegations in paragraph 88 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 88, and therefore, denies those allegations.

89. HSBC Bank denies the allegations in paragraph 89 as they relate to HSBC Bank. With regard to Defendants other than HSBC Bank, HSBC Bank is without sufficient knowledge or information to form a belief as to the allegations in paragraph 89, and therefore, denies those allegations.

IX. COUNT FIVE – THE ALLEGED '778 DEFENDANTS

90. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 90 and therefore denies such allegations.

91. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 91 and therefore denies such allegations.

92. HSBC Bank is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 92 and therefore denies such allegations.

AFFIRMATIVE DEFENSES

93. HSBC Bank denies that Plaintiff is entitled to relief against HSBC Bank.

94. HSBC Bank asserts defenses to the Complaint in the following paragraphs. By asserting such defenses, HSBC Bank does not concede that it has the burden of proving the matter asserted.

FIRST DEFENSE

95. HSBC Bank has not infringed, and is not infringing directly, contributorily or by inducement, any valid claim of the '988, '137, '007 and '868 patents. HSBC Bank is not liable in any respect for any alleged infringement of the '988, '137, '007 and '868 patents by anyone else.

SECOND DEFENSE

96. Each of the claims of the '988, '137, '007 and '868 patents is invalid and void for failing to comply with one or more of the requirements for patentability specified in Title 35, U.S. Code, §§ 102, 103 and 112.

THIRD DEFENSE

97. On information and belief, and subject to further amendment as HSBC Bank obtains more information during discovery, the '988, '137, '007 and '868 patents are unenforceable as a result of inequitable conduct in their procurement due to material misrepresentations made to the Examiner of the U.S. Patent and Trademark Office during the prosecution of those patents.

FOURTH DEFENSE

98. The Complaint, in whole or in part, fails to state a claim for which relief can be granted.

FIFTH DEFENSE

99. DataTreasury's claims are barred, in whole or in part, by the equitable doctrines of waiver, acquiescence, estoppel, and laches, in that DataTreasury unreasonably delayed in bringing its alleged claims.

SIXTH DEFENSE

100. DataTreasury has no standing to assert claims of infringement with respect to at least the '988 and/or the '137 patents because DataTreasury is not the owner of those patents.

SEVENTH DEFENSE

101. At least some of the allegedly infringing activities of HSBC Bank that DataTreasury complains of in its Complaint were "for the Government and with the authorization or consent of the Government" for the purposes of 28 U.S.C. § 1498(a).

102. At least part of DataTreasury's remedy for HSBC Bank's allegedly infringing use complained of in the Complaint "shall be by action against the United States in the

United States Court of Federal Claims for the recovery of [its] reasonable and entire compensation for such use" pursuant to 28 U.S.C. § 1498(a).

COUNTERCLAIMS

103. Counterclaimant HSBC Bank USA, N.A. ("HSBC Bank") asserts the following counterclaims against DataTreasury Corporation ("DataTreasury"), and alleges as follows:

JURISDICTION AND VENUE

104. HSBC Bank's First and Second Counterclaims arise under 28 U.S.C. §§ 2201 and 2202 and seek declaratory relief and further relief based upon a declaratory judgment or decree. In these Counterclaims, HSBC Bank seeks a judicial declaration as to noninfringement and invalidity of U.S. Patent Nos. 5,910,988 ("the '988 patent"), 6,032,137 ("the '137 patent"), 5,265,007 ("the '007 patent"), and 5,717,868 ("the '868 patent"). This Court has original jurisdiction over all counterclaims under 28 U.S.C. §§ 1331, 1338(a) and (b), and 1367.

105. Venue in this district is based on 28 U.S.C. § 1391. This Court has personal jurisdiction over DataTreasury. HSBC Bank is a Delaware corporation that maintains its principal place of business in the State of Delaware.

106. Based on the allegations of paragraph 1 of the Complaint, DataTreasury Corporation is a Delaware corporation that maintains its principal place of business at 101 East Park Blvd., #600, Plano, TX 75074.

FIRST COUNTERCLAIM FOR RELIEF

(Declaratory Judgment – Non-infringement)

107. HSBC Bank repeats and realleges paragraphs 1-111, as if fully set forth herein.

108. Plaintiff and Counterclaim-Defendant DataTreasury Corporation alleged in its Complaint that it is the assignee of the '988, '137, '007, and '868 patents.

109. Plaintiff and Counterclaim-Defendant DataTreasury Corporation by its Complaint has charged HSBC Bank with infringement and contributory infringement of the '988, '137, '007, and '868 patents.

110. HSBC Bank has not infringed and is not infringing any claim of the '988, '137, '007, and '868 patents. HSBC Bank has not contributorily infringed and is not contributorily infringing, and has not actively induced infringement and is not actively inducing others to infringe any claim of the '988, '137, '007, and '868 patents.

111. HSBC Bank seeks a judicial declaration that it does not infringe or contributorily infringe, nor has it induced infringement of either the '988, '137, '007, or '868 patents.

SECOND COUNTERCLAIM FOR RELIEF

(Declaratory Judgment – Invalidity)

112. HSBC Bank repeats and realleges paragraphs 1-116, as if fully set forth herein.

113. The '988, '137, '007, and '868 patents are invalid and void for failure to comply with the conditions of patentability specified in Title 35 of the United States Code, including without limitation, sections 102, 103 and 112 thereof.

114. HSBC Bank seeks a judicial determination that the '988, '137, '007, and '868 patents are invalid.

PRAYER FOR RELIEF

WHEREFORE, HSBC Bank USA, N.A. respectfully prays for judgment against DataTreasury Corporation as follows:

(1) DataTreasury takes nothing by its Complaint;

(2) Dismiss with prejudice the Complaint against HSBC Bank;

(3) Declare that HSBC Bank does not infringe any claim of the '988, '137, '007, and '868 patents;

(4) Declare that the '988, '137, '007, and '868 patents are invalid;

(5) Declare that HSBC Bank's Counterclaims constitute an exceptional case under 35 U.S.C. §285 and HSBC Bank is entitled to an award of its attorney fees;

(6) Award HSBC Bank its costs and disbursements of this action; and

(7) Award HSBC Bank such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served on the 9th day of April, 2007 via electronic transmission.

Bank of America – Listserve (BankofAmericaF&R@fr.com)
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Zion First National Bank – Listserve (Foley-DTC@foley.com)
Harris Bancorp. – Listserve (Harris_DataTreasury@mckoolsmith.com
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/s/
Tim S. Leonard